

§ 240.10a-2

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or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him to cover such sale is then available to him such foreign securities market and intends to accept such offer immediately;

(9) [Reserved]

(10) Any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment; or

(11) Any sale of a security covered by paragraph (a) of this section (except a sale to a stabilizing bid complying with § 242.104 of this chapter) by any broker or dealer, for his own account or for the account of any other person, effected at a price to the most recent offer communicated by such broker or dealer to an exchange or association pursuant to § 240.11Ac1-1 in an amount less than or equal to the quotation size associated with such offer, if such offer, when communicated, was (i) above the price at which the last sale, regular way, for such security was reported pursuant to an effective transaction reporting plan; or (ii) at such last sale price, if such last sale price is above the next preceding different price at which a sale of such security, regular way, was reported pursuant to an effective transaction reporting plan.

(12) For the purposes of paragraph (e)(8) of this section, a depositary receipt of a security shall be deemed to be the same security as the security represented by such receipt. For the purposes of paragraphs (e)(3), (4) and (5) of this section, the term "third market maker" shall mean any broker or dealer who holds itself out as being willing to buy and sell a reported security for its own account on a regular and continuous basis otherwise than on an exchange in amounts of less than block size.

(13) A broker-dealer that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of Rule 3b-3 (§ 240.3b-3) and of this section notwithstanding that such broker-dealer may not have a net long

position in such security if and to the extent that such broker-dealer's short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(f) This rule shall not prohibit any transaction or transactions which the Commission, upon written request or upon its own motion, exempts, either unconditionally or on specified terms and conditions.

(Secs. 2, 3, 6, 9, 10, 15, 17 and 23, Pub. L. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897 and 901, as amended by secs. 2, 3, 4, 11, 14 and 18, Pub. L. 94-29, 89 Stat. 97, 104, 121, 137 and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, and 78w); sec. 15A, as added by sec. 1, Pub. L. 75-719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94-29, 89 Stat. 127 (15 U.S.C. 78o-3); sec. 11A, as added by sec. 7, Pub. L. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1); 15 U.S.C. 78a *et seq.*, and particularly secs. 2, 3, 10(a), 10(b), 15(c), and 23(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(a), 78j(b), 78o(c), and 78w(a))

CROSS REFERENCES: For interpretative release applicable to § 240.10a-1, see No. 1571 in tabulation, part 241 of this chapter; for definition of "short sale", see § 240.3b-3.

[40 FR 25444, June 16, 1975, as amended at 45 FR 12390, Feb. 26, 1980; 45 FR 79021, Nov. 28, 1981; 46 FR 49114, Oct. 8, 1981; 49 FR 9415, Mar. 13, 1984; 51 FR 8804, Mar. 14, 1986; 52 FR 24152, June 29, 1987; 58 FR 18146, Apr. 8, 1993; 62 FR 543, Jan. 3, 1997]

§ 240.10a-2 Requirements for covering purchases.

(a) No broker or dealer shall lend, or arrange for the loan of, any security registered on, or admitted to unlisted trading privileges on, a national securities exchange for delivery to the broker for the purchaser after sale, or shall fail to deliver a security on the date delivery is due, if such broker or dealer knows or has reasonable grounds to believe that the sale was effected, or will be effected, pursuant to an order marked "long," unless such broker or dealer knows, or has been informed by the seller (1) that the security sold has been forwarded to the account for which the sale was effected, or (2) that the seller owns the security sold, that it is then impracticable to deliver to such account the security owned and that he will deliver such security to such account as soon as it is possible

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without undue inconvenience or expense.

(b) The provisions of paragraph (a) of this section shall not apply (1) to the lending of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange by a broker or dealer through the medium of a loan to another broker or dealer, or (2) to any loan, or arrangement for the loan, of any such security, or to any failure to deliver any such security if, prior to such loan, arrangement or failure to deliver, a national securities exchange, in the case of a sale effected thereon, or a national securities association, in the case of a sale not effected on an exchange, finds (i) that such sale resulted from a mistake made in good faith, (ii) that due diligence was used to ascertain that the circumstances specified in § 240.10a-1(d)(1) existed or to obtain the information specified in clause (2) thereof, and (iii) either that the condition of the market at the time the mistake was discovered was such that undue hardship would result from covering the transaction by a “purchase for cash” or that the mistake was made by the seller’s broker and the sale was at a price permissible for a short sale under § 240.10a-1 (a) or (b).

(Sec. 10, 48 Stat. 891, as amended, 64 Stat. 1265, 15 U.S.C. 78j(a); sec. 23(a), 48 Stat. 901, as amended, 49 Stat. 704, as amended, 49 Stat. 1379, as amended, Pub. L. 94-29 § 18 (June 4, 1975), 15 U.S.C. 78w(a))

CROSS REFERENCE: For interpretative release applicable to § 240.10a-2, see No. 1571 in tabulation, Part 241 of this chapter.

[40 FR 25445, June 16, 1975]

MANIPULATIVE AND DECEPTIVE DEVICES AND CONTRIVANCES

§ 240.10b-1 Prohibition of use of manipulative or deceptive devices or contrivances with respect to certain securities exempted from registration.

The term *manipulative or deceptive device or contrivance*, as used in section 10(b) (48 Stat. 891; 15 U.S.C. 78j(b)), is hereby defined to include any act or omission to act with respect to any security exempted from the operation of section 12(a) (48 Stat. 892; 15 U.S.C. 78l(a)) pursuant to any section in this

part which specifically provides that this section shall be applicable to such security if such act or omission to act would have been unlawful under section 9(a) (48 Stat. 889; 15 U.S.C. 78i(a)), or any rule or regulation heretofore or hereafter prescribed thereunder, if done or omitted to be done with respect to a security registered on a national securities exchange, and the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to use or employ any such device or contrivance in connection with the purchase or sale of any such security is hereby prohibited.

(Secs. 10, 12, 48 Stat. 891, 892; 15 U.S.C. 78j, 78l)

CROSS REFERENCES: For applicability of this section, see §§ 240.12a-4 and 240.12a-5. For regulations relating to employment of manipulative and deceptive devices, see §§ 240.10b-3 and 240.10b-5.

[13 FR 8183, Dec. 22, 1948]

§ 240.10b-2 [Reserved]

§ 240.10b-3 Employment of manipulative and deceptive devices by brokers or dealers.

(a) It shall be unlawful for any broker or dealer, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, to use or employ, in connection with the purchase or sale of any security otherwise than on a national securities exchange, any act, practice, or course of business defined by the Commission to be included within the term “manipulative, deceptive, or other fraudulent device or contrivance”, as such term is used in section 15(c)(1) of the act.

(b) It shall be unlawful for any municipal securities dealer directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, to use or employ, in connection with the purchase or sale of any municipal security, any act, practice, or course of business defined by the Commission to be included within the term “manipulative, deceptive, or other fraudulent